89-217

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

Raphael Gregorian
and California International Trade
Corporation,

Petitioners

v.

Izvestia, Ministry of Foreign Trade of
the Union of Soviet Socialist Republics,
Union of Soviet Socialist Republics,
V/O Medexport, and
V/O Licensintorg,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Questions Presented

Whether the courts of this country lack subject matter jurisdiction of all claims of libel against a foreign sovereign's instrumentalities?

Whether knowing disregard by a foreign sovereign's instrumentalities of the requirements of the United States legal system entitle them to be excused from the effects of default judgments taken against them?

Whether the courts in interpreting the laws of the United States respecting commercial activities of foreign sovereigns should consider what the executive branch of our government asserts regarding the political implications of the laws' interpretations?[1]

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[1] The parties to the proceeding in the United States Court of Appeals for the Ninth Circuit were Raphael Gregorian and California International Trade Corporation, petitioners herein, and V/O Medexport and V/O Licensintorg, respondents herein.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners herein, Raphael Gregorian and California International Trade Corporation,[2] pray that a writ of certiorari issue to review the judgment of the United States

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[2] California International Trade Corporation has no parent company, subsidiary, or affiliate corporations.

Court of Appeals for the Ninth Circuit, entered in the above-captioned case on April 12, 1989.

Citation to Opinions Below

The opinion and order of the United States district court for the Central District of California is officially reported as Gregorian v. Izvestia, 658 F.Supp. 1224 (C.D.Cal. 1987) and is annexed as Appendix A. The opinion of the United States Court of Appeals for the Ninth Circuit is not yet officially reported, and is annexed as Appendix B.

Jurisdiction

The judgment of the United States Court of Appeals for the Ninth Circuit was made and entered on April 12, 1989 and a copy thereof is appended to this petition in the Appendix. The jurisdiction of this court to review the decision of the Court of Appeals for the Ninth Circuit on petition for writ of certiorari is conferred by 28 U.S.C.

section 1254(1).

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Statutory Provisions

The Foreign Sovereign Immunities Act, 28 U.S.C. sections 1602 through 1611, is set out in full in the Appendix hereto. In relevant part, the statute provides:

In section 1603(d):

> A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

In section 1603(e):

> A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

In section 1605:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case --
>
> > (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

> (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;
>
> . . .
>
> (5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to --
>
> . . .
>
> > (B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

Statement of the Case

The export of goods and services from the United States to instrumentalities of foreign governments, being no small part of

the vast global market, is bound to result occasionally in commercial disputes. A commercial dispute it seems is what petitioners in this case have with two trade organizations from the U.S.S.R., which agreed to buy American-manufactured medical supplies. It should therefore be a procedurally simple matter to have the dispute adjudicated under the law that Congress enacted for just such a purpose, the Foreign Sovereign Immunities Act, 28 U.S.C. sections 1602 et seq. (hereafter the "FSIA" or "the Act"). Instead, after the United States, through the Department of State, among others, injected political considerations into this action, petitioners' trade libel claim has been dismissed and its judgments for breach of contract have been reopened.

The libel claim is based on an article appearing in the Soviet publication, Izvestia. In the Soviet equivalent of an editorial, the newspaper accused petitioners of unscrupulous business practices as well

as smuggling, and hinted at espionage. These accusations could hardly have been better calculated to destroy petitioners' export business. Now respondents claim that they are immune to a libel suit, and even a trade libel suit, in this country, and the courts below, listening to attorneys for the United States, have agreed. The district court overturned its default judgment for libel and the Court of Appeals has found that trade libel, as long as it is published by a Soviet publication such as Izvestia, is a sovereign "governmental" act.

Comments from lawyers representing the executive branch of our government have also swayed the courts below from default judgments for petitioners for breach of contract. When all of the Soviet respondents chose not to appear before the district court, though properly served, petitioners proved that they had suffered damage because those Soviet respondents had agreed to buy medical goods, and then failed

to pay for them. With the help of our government their disregard for the American judicial system was later excused, and petitioners now are ordered to prove their damage again, in the face of Soviet opposition that now denies the existence of any contracts at all, and still insists on sovereign immunity, even for such a contract dispute. A fuller explanation of the facts follows.

Petitioner Raphael Gregorian, as the Court of Appeals states, started his export business with Soviet buyers in 1970. The other petitioner is his California corporation, California International Trade Corporation ("CIT"). The business prospered so that in 1982, CIT was awarded "accreditation" by the Soviet Ministry of Foreign Trade. This accreditation allowed CIT and Mr. Gregorian to set up shop in the Soviet Union, and in fact they employed Soviet personnel and occupied an office in Moscow with telephone and telex equipment, none of which would have been

otherwise available. Accreditation also gave a measure of assurance to petitioners' American suppliers that CIT had a foothold in the Soviet market.

As petitioners were able to show the district court in proving up their (now overturned) default judgments, they contracted with defendants the Soviet Ministry of Foreign Trade, the U.S.S.R. and two of the Soviet government's foreign trading organizations, V/O Medexport and V/O Licensintorg, to sell three sets of medical equipment. The agreement on one set was reached in I982, and agreements on the other two in 1984. Though the equipment was accepted and used in Soviet hospitals at least as of 1984, it has never been paid for.

Apparently petitioners were expected to feel paid off by the accreditation. They did not, and on November 10, 1984, the accreditation, due to expire thirty days later, was formally revoked by the Ministry of Foreign Trade. On November 18, 1984,

Izvestia published its article naming Mr. Gregorian: "Duplicitous Negotiator: A Story About a U.S. Firm and an Abuse of Trust." Izvestia is sold not only in the Soviet Union, but in this country as well, and indeed throughout the world. Accused in such a publication of smuggling, bribery and unethical business practices, not to mention spying, petitioners' business was devastated, and it never recovered.

Petitioners had no recourse but to file suit, which they did in the United States district court for the Central District of California, in January 1985. They alleged that Izvestia had acted in concert with Soviet government authorities, and specifically with the Ministry of Foreign Trade and the two defendant trading organizations, to publish the libellous article as a ploy, part of the scheme to avoid payment for medical equipment and to deny contractual obligations. Service on the Soviet defendants was duly made pursuant to 28 U.S.C.

section 1608(a), so that on May 31, 1985 the American Embassy in Moscow had transmitted the suit papers. The papers, addressed to each of the Soviet defendants, included advices on the Act generally, and specifically the risk of default after sixty days.

Each of the Soviet defendants ignored the jurisdiction of the district court and disregarded the provisions of the Act. They also disregarded several efforts to communicate regarding the suit initiated at many steps in the litigation by counsel for petitioners. Though the Soviets had been specifically informed by the U.S. Department of State in May 1985 that neither it nor the American Embassy was in a position to comment on the suit, but that the matter must be resolved according to U.S. law and procedure, the Foreign Ministry of the U.S.S.R. merely returned the suit papers with a note to the American Embassy in Moscow, saying that "the Soviet State and its organs enjoy immunity from the jurisdiction of foreign

courts." 658 F.Supp. at 1227.

The district court entered the default of each of the Soviet defendants on July 31, 1985, and petitioners proceeded to prove up their damages. Having received satisfactory evidence, the court entered default judgments on four contract claims on June 25, 1986 in the total amount of $163,165.17, and on one libel claim on July 8, 1986 for general damages of $250,000.

Again petitioners, through their counsel, made efforts to communicate with the Soviets to resolve the litigation, and again their efforts were ignored. On November 12, 1986, therefore, they began to execute on the judgments, seizing a typewriter used by an Izvestia correspondent in Maryland. On November 20, 1986, petitioners were permitted by the court to execute against certain funds held for the benefit of respondent V/O Medexport in an American bank. The next day an appearance in this litigation was made by the respondent trading

organizations, V/O Medexport and V/O Licensintorg. They were represented by the same American counsel who had represented Soviet defendants in each of the reported federal cases that have involved the Soviets and their contentions of immunity.[3]

On February 2, 1987, the district court took action at the instance of the Soviets, staying any further execution until a decision should be reached on the trading organizations' motion to vacate the judgment against them and to dismiss the complaint on grounds of immunity. The court was urged to take this step not only by the Soviets, but by the U.S. Department of State.

On April 5, 1987, the district court entered its order vacating the judgment in favor of petitioners based on libel, concluding that it had no subject matter jurisdiction under subsections (a)(2) or (a)(5) of section 1605 of the Act. This conclusion

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[3] See 658 F.Supp. at 1239 and cases ere cited.

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was reached despite the court's concomitant conclusion that the failure of each of the defendants to appear in the action had been culpable. The court seems to have reasoned that subject matter jurisdiction under the Act cannot be waived, despite the provisions in the act to the contrary.

The district court at least refused to overturn the default judgments on the contract claims, because of the disregard for U.S. procedure that the Soviets had shown.

The Court of Appeals for the Ninth Circuit on April 12, 1989 affirmed the lower court's dismissal of the libel claim. On the contract claims it held that culpable conduct was not the issue, and remanded for further consideration.

This Writ Should Be Granted

The decision below by the Court of Appeals has made it effectively impossible for anyone to sue any instrumentalities of a foreign power for libel, no matter the

circumstances. The court based its decision upon the only other action under the Act involving libel, Yessinin-Volpin v. Novosti Press Agcy., 443 F.Supp. 849 (S.D.N.Y. 1978), but that decision stands for no such sweeping prohibition of libel suits against foreign sovereigns and their agents.

The libel in this case clearly arose from a commercial dispute, and as such it must be decided according to the explicit provisions of the Act providing that commercial disputes are within the jurisdiction of the courts of this country. In fact the district court below recognized that the libel in this case was commercial, but misinterpreted the Act and found that immunity always applies to libel. Yessenin-Volpin actually stands for just the opposite proposition, that if libel is a commercial activity, it is not barred. But the Court of Appeals disregarded this aspect of Yessenin-Volpin, without discussing the district court's reasoning, by jumping to

the conclusion, without evidence, that if commentary is in Izvestia (or in any Soviet publication, apparently), it cannot be commercial in nature, and there can be no remedy in United States courts.

There are additional reasons that the district court and the Court of Appeals need not and should not have reached such a drastic conclusion. It should have been acknowledged, as the Act itself indicates, that conduct such as the Soviet respondents have shown in this case, knowingly flouting the power of American courts to adjudicate commercial disputes in which they are involved, cannot fairly be tolerated. After knowing refusal to appear pursuant to the provisions of the Act, and a finding by a district court that it does have subject matter jurisdiction pursuant to the Act, a defendant must be deemed to have waived contentions of immunity, including any relief from default. Hence neither the default judgment for libel nor those for

breach of contract should have been overturned in this case.

Moreover, with the executive branch of government encroaching upon the judiciary as they have done in this case, where only private persons' rights hang in the balance, justice can never be administered as Congress intended under the Act, that is, without politicization or exaltation of concerns of foreign policy over those involving commerce. This court alone can put an effective end to such U.S. governmental tampering, through which the Soviets in particular, who have been long accustomed to arguing the fine points of sovereign immunity in our courts, have managed ingeniously to gain unfair advantage over other litigants in those courts.

1. **According to the decision below, there is no remedy against foreign sovereigns or their agents on account of a commercial libel stemming from a trade dispute. The Act should not be interpreted in this unfair manner.**

The Court of Appeals for the Ninth Circuit cites Yessenin-Volpin v. Novosti Press Agency, 443 F.Supp. 849 (S.D.N.Y. 1978),[4] for the very broad and very harsh proposition that libel, in the context of the Act, is a wrong without a remedy. Commentary, in the court's view, even in this case in which only commercial activity is involved, is "an activity whose essential nature is public or governmental." Yessenin-Volpin, supra, at 856.

The Court of Appeals was sidestepping the issue in this case. The district court found that the libel in this case was part

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[4] It should be noted here that this case, like the present one, instances "suggestions" by the U.S. State Department to the district court. See page 851, n.1.

of commercial activity, and that decision was never disturbed. Instead of examining this issue, the Court of Appeals simply decided in effect that anything appearing in Izvestia must be an act of state, and that the Act of State doctrine in this case would preclude any recovery. But the Act was never meant to cloak activities commercial in their nature with governmental immunity.

Commercial activities are covered by 28 U.S.C. 1605(a)(2). 28 U.S.C. 1603(d) explains that "the character of an activity shall be determined by reference to the nature of the course of conduct for a particular transaction, rather than by reference to its purpose."

If the activity is of the type that private persons, for instance, would engage in for profit, the Act excepts such activity from immunity. Callejo v. Bancomer, S.A., 764 F.2d 1101, 1109 (5th Cir. 1985). In addition, courts will look generally to whether the activity constitutes or is in

connection with commercial activity, regardless of the defendant's generally commercial or governmental character." Arango v. Guzman Travel Advisor's Corp., 671 F.2d 1371, 1379 (5th Cir. 1980). Hence the district court below found that the Soviets were engaged in commercial activity in dealing with petitioners according to 28 U.S.C. 1605(a)(2).

The district court further found that the commercial activity was carried on in the United States because Izvestia is distributed here.

All of these facts obtaining, none of which the Court of Appeals discussed, the Act of State doctrine does not apply, and a bald finding that Izvestia articles are "governmental" must be overruled. The Court of Appeals could not properly hold that petitioners have no recourse for their commercial claims when all of the evidence in the record before them points to commerce, not government.

The inappropriateness of applying the Act of State doctrine in this case is only the more glaring when one considers that it was never raised in the district court. Had respondents raised the point in the district court, an evidentiary hearing might have been held and a record developed. Instead they chose not to submit the question to any factual inquiry by the district court, and there was and is no reason now for a higher court to cut off petitioners' rights on this basis.

It seems that the Court of Appeals relied on just one source for their ruling respecting libel, namely the New York district court's decision in Yessenin-Volpin. That case actually recognized that if a libel arises in a commercial dispute, contrary to the facts in that case, the libel comes within U.S. courts' jurisdiction pursuant to 28 U.S.C. 1605(a)(2). But the Court of Appeals below stands this reasonable interpretation on its head, and cites the case as

its authority that commentary in Soviet publications must be "governmental," and therefore outside the Act. The case stands for no such sweeping generalization, or if it does, it, like the Ninth Circuit's decision in this case, should be overruled.

In Yessenin-Volpin the plaintiff was suing Soviet news agencies, instrumentalities of the Soviet government, on account of a personal attack against him that he alleged they had written and arranged to be published in several publications, including Izvestia. But the only connection with the Act's provisions regarding commercial activity in that case was the method of publication of the different publications involved, and not the content of the disputed articles themselves. Hence the plaintiff argued that because the Soviet publications engaged generally in commercial activities, they could not, as generally commercial entities, claim immunity.

The plaintiff in Yessenin-Volpin thus in-

vited the court's attention to the general nature of Soviet publications, and it is not surprising that making such a general survey rather than looking to specifics, the court found that the nature of Soviet publications is generally governmental, rather than commercial. There was no attempt to focus the court's attention on any "regular course of commercial conduct or a particular commercial transaction or act," such as the Act specifies for a finding of commercial activity under the definition of this term in 28 U.S.C. section 1603(d). The mere fact that Soviet publications are sold in this country therefore, though a commercial detail of the publications' distribution, did not transform commentary having nothing to do with commerce into a commercial activity subject to the Act.

In this case, on the other hand, the heart of the dispute is commercial, without mistake. As petitioners alleged in their complaint, the defendants caused the defamatory

article to be published in order to avoid their contractual obligations. The article was published in late 1984, long after equipment had been delivered, some in 1982. But the commentary was not simply published in the midst of a long-running commercial dispute, it was itself devoted, as even its title shows, to the commercial aspects of petitioners' activity in the Soviet Union. Hence it was indeed both a part of "a regular course of commercial conduct" and "a particular commercial transaction or act." 28 U.S.C. 1603(d).

This commercial activity at the heart of this dispute, assuming arguendo it is not properly the subject of a default judgment, must next be analyzed under the three statutory exceptions to sovereign immunity set out in 28 U.S.C. section 1605(a)(2). Under the second, if there was an act performed in the United States in connection with this commercial dispute, and the action is based upon that act, that is enough for

jurisdiction. There was such an act: the publication of the libel in this country. Izvestia is sold in California and throughout the United States.

It is hornbook law that a publication of defamatory material occurs in each instance that the material is offered to third parties. See Rest.2d Torts sections 558, 557. That is, "publication" of defamatory material is broader than what is meant by "publication" when speaking of printed materials. "Publication" of defamation in tort occurs in each place that printed materials are distributed, and not simply where the materials were printed. Hence in this case, the wrong of publishing defamatory matter occurred in each part of the United States where Izvestia is distributed, that is, nationwide, and not simply in the U.S.S.R., where Izvestia originates.

Alternatively, the third test of 28 U.S.C. section 1605(a)(2) applies in this case, because petitioners' action is based upon

"an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States . . . ." The direct effect in this case is not simply damage to petitioners in this country, but the failure of the Soviet defendants to transmit payments for medical equipment to California offices of petitioner CIT, as they were contractually obligated to do.

2. In any case, immunity was waived in this case by the knowing conduct of the Soviet defendants.

At the urging of the government's lawyers, the district court inconsistently held that the defense of immunity was in effect waived as to petitioners' contract claims but not their libel claim, while the Court of Appeals seems to have accepted the first half of this resolution, but then ordered that the district court must reopen the case

regarding petitioners' contract claims. In making these rulings, each court impermissibly refused to follow the explicit provision of the Act regarding implicit waiver of immunity. As 28 U.S.C. section 1605 states:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case --
>
> > (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver . . . .

In this case the waiver was implicit. But it was not the first time that Soviet defendants have chosen to default, rather than comply with U.S. law, even though, as the district court below noted after a review of cases involving Soviet defendants that predated the instant case, they "rank among the countries with the most experience and sophistication in dealing with the FSIA." 658 F.Supp. at 1239. See also Von Dardel v.

U.S.S.R., 623 F.Supp. 246, 252 (D.C.D.C. 1985) and cases there cited.

Courts have justifiably found implicit waivers of immunity for a number of reasons in accordance with the Act. Hence in Corporacion Venezolana de Fomento v. Vintero Sales Corp., 477 F.Supp. 615 (S.D.N.Y. 1979), the court found implicit waiver where responsive pleadings were filed, which had not mentioned immunity. So also in U.S. v. Crawford Enterprises, Inc., 643 F.Supp. 370 (S.D.Tex. 1986), waiver was found where no mention of sovereign immunity was made by the defendant in responsive pleadings, and in fact there was no effort to raise the issue until a contempt hearing relating to discovery.

In fact, exactly as in Von Dardel, supra, the sophisticated Soviet defendants in this case chose to do nothing in court at the outset, but rather merely expressed their reliance on "absolute immunity" by communicating by diplomatic means with the exec-

utive branch of our government. As the court in Von Dardel stated:

> It was the express purpose of the FSIA to remove the executive branch from the determination of such issues. By raising the issue of sovereign immunity in a diplomatic note, the U.S.S.R. has knowingly chosen a procedure that is no longer available under United States law.

Id., 623 F.Supp. at 253.

The Court of Appeals should not have disturbed the judgments with respect to petitioners' contract claims, and in fact it should have reversed the order of the district court respecting jurisdiction over the libel claim. If sophisticated defendants such as the Soviet Union and its trading organizations are allowed to rely on their own sophistication and the intricate machinery of the U.S. Department of State in avoiding a response to lawfully served complaints before the courts of this country, the Congressional intent in providing an American forum in which claims such as this can be heard will be defeated by one of the

oldest of defense tactics: continual foot-dragging.

It should be borne in mind that a government and its instrumentalities should not have so much time to wear down claimants in light of another overwhelming advantage they enjoy in litigation, namely money and resources. A foreign state, like any government, can be expected to hire advocates as sophisticated as they wish, and to continue to pay for such advocacy virtually without limit. The injured plaintiff is in no such position, typically; in fact, as in this case, quite the reverse is true.

If therefore, as in this case, there is a knowing decision by a foreign litigant to ignore the provisions of the Act, the provisions of the Act respecting waiver of immunity should as a matter of basic fairness be invoked to prevent delay and injustice. The courts need not wait arbitrarily for responsive pleadings to be filed in the action before waiver may be considered, but

should find waiver where there is no excuse for a failure to comply with the Act beyond insistence that the Act, and its theory of restrictive immunity, is inconsistent with the foreign state's views.

3. The intrusion of "suggestions" by lawyers representing the executive branch of government was improper in this case, and being just the sort of conduct the Act was designed to avoid, has led to manifest injustice indicating the need for review in this case.

In Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 493 (1983), this court acknowledged that the Act provides the exclusive means of adjudicating actions involving foreign sovereigns and their agents in the courts of this country. This acknowledgement is in accord with congressional intent that the Act embody "the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by

foreign states before Federal and State courts in the United States." H.R.Rep. No. 94-1487, 94th Cong., 2d Sess. 12, reprinted in 1976 U.S.Code Cong. & Ad. News 6604, 6610.

In contrast, the State Department in this case put the district court and the Court of Appeals on notice that they were in the uncomfortable position of deciding whether this case involving some $450,000 in damages would affect the bilateral relations of the superpowers, and presumably the prospects of world peace and prosperity.

The American legal system had been bedeviled in the past by such "suggestions" from diplomats from the State Department regarding sovereign immunity, such that "the governing standards were neither clear nor uniformly applied." Verlinden B.V., supra, 461 U.S. at 488. The Act freed the courts from the dangers of the former ad hoc approach, and it also freed the State Department, which would otherwise remain "in the

awkward position of a political institution trying to apply a legal standard to litigation already before the courts." H.R.Rep. No. 94-1487, supra at 8, reprinted in 1976 U.S.Code Cong. & Ad. News 6604, 6607.

In fact, courts have recognized the danger of resolving politically sensitive questions, rather than subjecting, as they should, such questions to the tests set forth in the Act. See, e.g., Frolova v. U.S.S.R., 761 F.2d 370 (7th Cir. 1985). Nor is this to say that courts must never consider political considerations. In Jackson v. People's Republic of China, 794 F.2d 1490 (11th Cir. 1986) cert. denied 107 S.Ct. 1371 (1987), political considerations were taken into account properly only after the court determined that the Act should not be applied retroactively, and therefore did not apply to the pre-enactment events in dispute in that case.

In this case, in contrast, the State Department and associated U.S. government

lawyers have insisted at length on making "suggestions" both to the district court and to the Court of Appeals about what is and what is not governmental in nature, what is and what is not in the diplomatic or foreign policy interests of the U.S. government, and therefore what private rights in this case should and should not be subject to the Act.[5] That is improper. This type of inter-meddling in the judicial process was just

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For instance, on page four in the opening comments by the United States in its brief to the Court of Appeals, there appears this statement:

> [W]e assert that the district court seriously misconceived the role properly played here by the United States in encouraging the Soviets to appear and in detailing for the district court the legitimate foreign policy concerns at stake.

Nor were the attorneys of the executive branch above using innuendo to sway the appeals court without evidence, hinting at superior information from "diplomatic" sources. On the same page four of its brief to the Court of Appeals, in discussing the libelous article published in this case by Izvestia, this footnote is discreetly placed:

> It is our understanding that several persons who had dealings with Gregorian have been convicted of bribery in Soviet courts.

what the Act was meant to stop. As demonstrated above, it has led in this case to manifest injustice.

Conclusion

For all of the foregoing reasons, it is respectfully submitted that the Court should review the important questions raised in this action regarding the Foreign Sovereign Immunities Act, and grant this petition for writ of certiorari.

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Raphael Gregorian
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Izvestia, Ministry of Foreign Trade of
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Respondents.

Proof of Service

I, Gerald L. Kroll, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the eleventh day of July, 1989, I served copies of the foregoing petition for writ of certiorari and jurisdictional statement on the several parties thereto, as follows:

To John Mage, Wolf, Popper, Ross, Wolf & Jones, 845 Third Avenue, New York, New York 10022.

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